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March 15, 2022

VIA ELECTRONIC FILING

Honorable Geoffrey W. Crawford
Chief United States District Judge
P.O. Box 478
Rutland, VT 05702-0478

Re: *Martin v. Diocese of Buffalo, et. al.*
Civil Action No. 1:21-cv-491

Dear Judge Crawford,

My office represents Defendants SS Columba-Brigid and Father William J. Jud Weiksnar ("Defendants") in the above-captioned matter. This letter is intended to serve as Defendants' reply to their motion to dismiss the amended complaint [Dkt. No. 15].¹

Plaintiff's court-ordered deadline to oppose the instant motion was February 18, 2022. However, Plaintiff has failed to file any opposition to the motion or request any further extension of time to do so. As a result, Defendants respectfully submit this reply and ask the Court to treat their motion as unopposed and decide their motion on the merits, dismissing the Amended Complaint in its entirety.

It has been more than three months since Defendants' current motion was filed and they are prejudiced by Plaintiff's continued failure to oppose the motion, which prevents the Court from hearing the merits of the motion and the litigation from progressing towards resolution. A brief overview of Plaintiff's failure to comply with numerous deadlines set by this Court is as follows:

Defendants filed their motion on December 9, 2021. Pursuant to Rule 7(b)(2)(B) of the Local Rules of Civil Procedure for the Western District of New York, where the Court does not set motion briefing deadlines by order, "[t]he opposing party shall have fourteen (14) days after service of the motion to file and serve responding papers, and

¹ Defendants previously filed a motion to dismiss the original Complaint [Dkt. No. 5], but withdrew said motion and filed a new motion to dismiss the Amended Complaint.

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the moving party shall have seven (7) days after service of the responding papers to file and serve reply papers.” The Court has not issued a briefing schedule with respect to Defendants’ motion. Thus, Plaintiff’s opposition was originally required to be filed no later than December 23, 2021. Plaintiff failed to file any opposition to the motion before December 23, 2021.

On December 27, 2021, Defendants filed a letter reply [Dkt. No. 19], asking the Court to treat their motion as unopposed and issue an order dismissing the Amended Complaint. Later that day, Plaintiff filed a motion for an extension of time to file an opposition [Dkt. No. 20]. The Court granted that motion by Text Order on December 29, 2021 [Dkt. No. 21]. The Court extended Plaintiff’s time to oppose the motion to January 7, 2022.

Thereafter, without notice to Defendants, Plaintiff’s counsel contacted the Court and requested another extension of time to oppose the motion. As a result of that communication, the Court entered a Text Order on January 5, 2022 allowing Plaintiff until January 21, 2022 to oppose the motion [Dkt. No. 22].

Plaintiff failed to file any opposition by January 21, 2022. As a result of her failure, Defendants filed another letter reply on January 22, 2022, again asking the Court to treat their motion as unopposed and enter an order dismissing the Amended Complaint [Dkt. No. 23].

The Court then entered a Text Order on January 26, 2022, allowing Plaintiff until February 11, 2022 [Dkt. No. 24], which upon information and belief was based on another verbal communication by Plaintiff’s counsel to the Court, of which Defendants were unaware.

The Court then entered a Text Order on February 11, 2022, allowing Plaintiff until February 18, 2022 [Dkt. No. 25], which upon information and belief was based on another verbal communication by Plaintiff’s counsel to the Court, of which Defendants were unaware.

Plaintiff has demonstrated no effort to adhere to this Court’s deadlines to oppose this motion and has caused this litigation to remain at a standstill. For that reason, Defendants additionally request that if Plaintiff makes any further *ex-parte* requests or motions for another extension of time to oppose the instant motion, that Defendants be afforded an opportunity to oppose the same and be heard on the issue.

Defendants also reserve the right to move for monetary sanctions and attorneys’ fees they have incurred as a result of Plaintiff’s continued failure to meet this Court’s deadlines, frustrating this case from advancing towards any resolution.

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Thank you for your attention to this matter.

Respectfully submitted,
BOND, SCHOENECK & KING, PLLC

/s/Kathleen H. McGraw, Esq. _____
Kathleen H. McGraw, Esq.

cc: Prathima C. Reddy, Esq. (*via* electronic filing)